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**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C.,)
an Idaho professional corporation,)
)
Plaintiff,)

vs.)

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)
)
Defendant.)

Case No. CIV 03-450-E-BLW

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)
)
Counterclaimant,)

**MOTION FOR SANCTIONS
PURSUANT TO F.R.C.P.
RULE 37(b)(2)**

vs.)

POCATELLO DENTAL GROUP, P.C., an)
Idaho professional corporation; DWIGHT G.)
ROMRIELL, individually; LARRY R.)
MISNER, JR., individually; PORTER)
SUTTON, individually; ERNEST SUTTON,)
individually; GREGORY ROMRIELL,)
individually; ERROL ORMOND, individually;)
and ARNOLD GOODLIFFE, individually;)

Counterdefendants.)

COMES NOW the Plaintiff and pursuant to F.R.C.P. RULE 37(b)(2) respectfully requests the Court to (1) strike the counterclaim of the Defendant InterDent Service Corporation; (2) strike the defenses raised by InterDent Service Corporation to the Plaintiff's Complaint; (3) deny InterDent Service Corporation any further right to conduct discovery in this case; and (4) award Pocatello Dental Group its attorney fees and costs associated with this motion and its prior motion seeking to compel InterDent Service Corporation to answer the Plaintiff's discovery.

In support of this Motion, the Plaintiff represents the following:

1. On March 31, 2004, Plaintiff served its first set of discovery upon the Defendant InterDent Service Corporation ("ISC"). On May 16, 2004, ISC served its response to that discovery. On April 26, 2004, Plaintiff served a second set of Requests for Admissions on ISC. On June 3, 2004, ISC served its response to that discovery.

2. On July 12, 2004, Plaintiff filed its motion to compel ISC to respond to a substantial part of Plaintiff's discovery.¹ On August 16, 2004, this Court granted Plaintiff's motion with respect to all but two of the discovery requests identified in the Motion to Compel.²

3. As of the date of this Motion for Sanctions, ISC has (1) not provided any answers to the interrogatories and requests for admissions covered by the Court's August 16, 2004, Order and

¹The Court is directed to Plaintiff's Motion to Compel, Docket No. 137 for the details of the Plaintiff's Motion to Compel, and the particular discovery requests which were the subject of that motion. In summary, the Court was asked to compel ISC to answer ten (10) interrogatories, nineteen (19) requests for admission, and eleven (11) requests for the production of documents.

²The Court ordered ISC to answer all of the Plaintiff's discovery requests other than Request for Production No. 21 (concerning ISC's lease of a facility for Plaintiff to use in providing dental services to its patients) and Request for Admission No. 4 (asking ISC to admit that it did not pay \$2.8 Million to Plaintiff's shareholders). Docket No. 167.

has provided only a portion of the records required by the Court's August 16, 2004, Order.³

4. Plaintiff began its search for evidence in March, 2004, shortly before this Court entered its scheduling Order in April of 2004. ISC has engaged in a determined battle to deny Plaintiff the discovery it seeks and has been successful in that regard for more than six months! During this time ISC has freely engaged in discovery by deposing four of Plaintiff's dentists and serving and receiving responses to written discovery from the Plaintiff and all of the third party and counterdefendants.

5. Discovery deadlines have been set for December 15, 2004. Rather than having nine (9) months to complete its discovery, due to the actions of ISC the Plaintiff has been limited to a two and one half (2½) month discovery window. Of course, even that time line would assume that the Plaintiff's discovery has been fully answered as of the date of this motion. In fact, ISC has made no meaningful effort to comply with this Court's August 16, 2004 Order. It is also anticipated by the Plaintiff that ISC has not yet finished its plan to make evasive and incomplete disclosure of evidence to the Plaintiff when and if it decides to comply with the Court's August 16, 2004 Order.

6. The only party served by ISC's conduct is ISC. Therefore, ISC should be the only party that suffers from the consequences of that conduct.

WHEREFORE, having established good grounds therefore, the Court is hereby asked to (1) strike the counterclaim of the Defendant InterDent Service Corporation; (2) strike the defenses raised

³On August 27, 2004, the Plaintiff received documents from ISC representing (1) the mail log ISC was ordered to maintain in February 8, 2004, (2) Profit and Loss Statements for the Plaintiff for the years 1999 through August, 2004 that ISC was ordered to provide the Plaintiff in February of 2004, and (3) a list of patients receiving dental care from the Plaintiff's dentists. No other documents have been provided in response to the Court's August 16, 2004, Order, notwithstanding the entry of a Protective Order by the Court on August 24, 2004.

by InterDent Service Corporation to the Plaintiff's Complaint; (3) deny InterDent Service Corporation any further right to conduct discovery in this case; (4) and award Pocatello Dental Group its attorney fees and costs associated with this motion and its prior motion seeking to compel InterDent Service Corporation to answer the Plaintiff's discovery.

Dated this 1st day of October, 2004.

COOPER & LARSEN, CHTD

Attorneys for Plaintiff

By: 

Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 1st day of October, 2004, I served a true and correct copy of the foregoing document as follows:

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